

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

26674

FILE: B-211582

DATE: October 31, 1983

MATTER OF: Jarrett S. Blankenship Co.

DIGEST:

1. A cogent and compelling reason to cancel a solicitation exists when the specifications overstate the agency's minimum needs.
2. Where a contracting agency properly cancels a solicitation, a disappointed bidder alleging that the cancellation was improper is not entitled to bid preparation costs.

Jarrett S. Blankenship Co. protests the cancellation of invitation for bids No. DACA84-83-B-0133, issued by the Department of the Army for the procurement of two packaged air cooled water chilling units (air conditioning units) to be installed by the Army in military family housing facilities at Kadena Air Base, Okinawa, Japan. We deny the protest.

The IFB required delivery within 90 days after award of the contract of two air conditioning units, both to be equipped with copper condenser coils and fins. The Army received seven bids in response to this solicitation. The apparent low bidder, American Engineering Corporation, offered two units, at least one of which had aluminum rather than copper coils and fins, for \$95,960. The apparent second low bidder, American Military Supply Services Company, offered two units with aluminum coils and fins for \$101,370.74. Blankenship, the apparent third low bidder, offered two units, with copper coil and fins, for \$123,246.02.

During the course of evaluating the bids, contracting officials determined that standard air conditioning units were equipped with aluminum rather than copper coils and fins, that units with copper coils and fins must be specially ordered and fabricated and therefore might be impossible for many contractors to supply within the required 90-day delivery period, and that requiring units with copper coils and fins might cost as much as \$30,000

027083

more than requiring units with aluminum fins. In addition, contracting officials were informed by Army technical experts in Okinawa that the useful service life of aluminum coils and fins, although less than that of copper ones, nevertheless was sufficient to satisfy government needs. The contracting officer subsequently canceled the solicitation on the grounds of inadequate or ambiguous specifications, citing an expected inability of contractors to deliver units with copper coils and fins sooner than approximately 5 or 6 months and the failure to include in the specifications a brand name or equal clause requiring bidders to offer Carrier air conditioning units or equal and to specify the make and model of the units they were offering (with the result that it was unclear what make and model several of the bidders were offering).

Blankenship argues that the specifications were not ambiguous or inadequate and that the cancellation was improper. The Army, on the other hand, justifies the cancellation on the grounds that the specifications were ambiguous and inadequate because air conditioning units with copper coils and fins could not be delivered within the required delivery period while units with aluminum components could be delivered within the delivery period; units with aluminum coils and fins would satisfy the government's needs at a lesser cost than for units with copper coils and fins; and the specifications failed to include the intended brand name or equal clause.

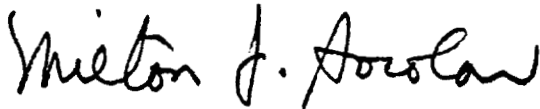
Of the several reasons given by the contracting officer for cancellation of the IFB, one is so clearly dispositive that we need discuss only it.

Cancellation of an IFB after bids have been opened and prices exposed is not permitted unless a cogent and compelling reason for cancellation exists. See International Alliance of Sports Officials, B-211049, B-211049.2, May 24, 1983, 83-1 CPD 562; Defense Acquisition Regulation (DAR) § 2-404.1 (Defense Acquisition Circular No. 76-17, September 1, 1978). However, where it is determined that an IFB contains specifications which overstate the minimum needs of the procuring agency, or the agency decides after bid opening that the needs of the government can be satisfied by a less expensive design differing from that on which bids were invited, there exists a compelling reason for cancellation of the IFB. See Uffner Textile Corporation, B-204358, February 8, 1982, 82-1 CPD 106; DAR § 2-404.1(b)(v). Since Blankenship has failed to show that

the Army had no reasonable basis for its determination that air conditioning units with aluminum coils and fins would satisfy the needs of the government at a lesser cost, we must conclude that the Army not only had a cogent and compelling reason to cancel the solicitation, see International Alliance of Sports Officials, supra, but in fact was required to do so. See Uffner Textile Corporation, supra.

Blankenship requests reimbursement for \$15,000 in bid preparation costs and lost profits for itself and \$10,000 in bid preparation costs and lost profits for its distributor. In view of our conclusion that the Army properly canceled the solicitation, this claim is denied, see Allstate Flooring Company, Inc., B-205661.2, October 15, 1982, 82-2 CPD 337, and we need not consider what, if any, portion of the claim would otherwise have been allowable.

The protest is denied.

for 
Comptroller General
of the United States